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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1004

STARLING GENE HELM, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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TABLE OF AUTHORITIES

CASES: Page

Davis v. United States, 374 F.2d 1 (1967) 7
Manhatten General Equipment Co. v. Commissioner, 297 U.S. 129, 134 (1936) 6
U.S. v. Al Majeid, 364 F.2d 224 ..... 5, 7
U.S. v. Crawford, 119 F. Supp. 729 (N.D. Calif. 1954) 6
U.S. v. Underwood, 151 F. Supp. 874, 876 (E.D. Pa. 1955) 6
Simmons v. U.S., 348 U.S. 397-406 (1955) 7

STATUTES, REGULATIONS:

50 U.S.C. App. § 456(j) 3, 3a

MILITARY SERVICE ACT OF 1967, § 6(j):

32 C.F.R. § 1625.2 ..... 3, 5, 5a
32 C.F.R. § 1625.4 ..... 3, 5a
32 C.F.R. § 1625.11 ..... 3, 6a
32 C.F.R. § 1625.12 ..... 3, 6a
32 C.F.R. § 1625.13 ..... 3, 7a
32 C.F.R. § 1625.14 ..... 3, 7a

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled case on November 10, 1967.

CITATIONS TO OPINIONS BELOW

There is but one opinion below, and that is the per curiam opinion of the Court of Appeals (No. 11,551), decided November 10, 1967, which affirmed the judgment below, and it is printed in the Appendix, *infra,* p. 1a, and is unreported.

JURISDICTION

The judgment of the United States Court of Appeals was entered on November 10, 1967. On December 20, 1967, the United States Court of Appeals entered an order denying a Motion to Extend Time for the Filing of Petition for Rehearing. On December 12, 1967, Mr. Chief Justice Warren issued an order extending the time in which to file this petition for a writ of certiorari up to and including January 9, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED FOR REVIEW

I.

Was registrant denied procedural due process when, following a reclassification from II-S to I-A, he went to the local Selective Service Board, within ten days of notice of reclassification, and was told by the clerk that he couldn't do anything? (Reclassification notice received by petitioner did state that he had the right to appeal, but it also stated that for information and advice go to your local board.)

II.

Was registrant denied procedural due process when clerk of local board to whom he had gone for advice following reclassification, within the ten day period, failed to advise him that he had the right to see a Government Appeal Agent and/or a legal advisor?

III.

Whether the presentation to a local Selective Service Board of a non-frivolous claim for reopening and consideration of a new Selective Service classification as a conscientious objector requires the local board to reopen such classification?

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

This case involves the due process clause of the Fifth Amendment and the religious liberty clause of the First Amendment.

The statute involved is Section 6(j) of the Universal Military Training and Service Act of 1950, as amended, 50 U.S.C. App. § 456(j), which at all times pertinent to this case, read as set out and printed in the Appendix, *infra*, pp. 3a-4a.

A number of Selective Service Regulations which were in effect at all times pertinent to this case are also involved. They are 32 C.F.R. § 1625.2, 32 C.F.R. § 1625.4, 32 C.F.R. § 1625.11, 32 C.F.R. § 1625.12, 32 C.F.R. § 1625.13, 32 C.F.R. § 1625.14, all of which are printed in the Appendix, *infra*, pp. 5a-7a.

STATEMENT OF THE CASE

Petitioner failed to report for induction into the Armed Forces at Asheboro, North Carolina, on July 28, 1966. His defense is that he was and is a conscientious objector, and that his Local Selective Service Board had improperly and unlawfully refused to so classify him or provide the normal administrative process. He was indicted, tried by a jury, found guilty, and sentenced to two years imprisonment in the United States District Court for the Middle District of North Carolina on June 12, 1967.

Petitioner was born December 21, 1940; registered with the Local Board No. 77 on December 24, 1958; was placed in Class 1-A on July 27, 1959; was reclassified 2-S on October 28, 1963; was again placed in Class 1-A on March 14, 1966.